

# BAKER & MCKENZIE

ATTORNEYS AT LAW

NORTH AND  
SOUTH AMERICA

EUROPE  
MIDDLE EAST

ASIA  
PACIFIC

AMSTERDAM MADRID  
BAHRAIN MILAN  
BARCELONA MOSCOW  
BERLIN MUNICH  
BRUSSELS PARIS  
BUDAPEST PRAGUE  
CAIRO RIYADH  
DUSSELDORF ROME  
FRANKFURT ST. PETERSBURG  
GENEVA STOCKHOLM  
KYIV WARSAW  
LONDON ZURICH

ALMATY  
BAKU  
BANGKOK  
BEIJING  
HANOI  
HO CHI MINH CITY  
HONG KONG  
HSINCHU  
MANILA  
MELBOURNE  
SINGAPORE  
SYDNEY  
TAIPEI  
TOKYO

815 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20006-4078  
TELEPHONE (202) 452-7000  
FACSIMILE (202) 452-7074

BOGOTA  
BRASILIA  
BUENOS AIRES  
CARACAS  
CHICAGO  
DALLAS  
GUADALAJARA  
HOUSTON  
JUAREZ  
MEXICO CITY  
MIAMI  
MONTERREY  
NEW YORK  
PALO ALTO  
RIO DE JANEIRO  
SAN DIEGO  
SAN FRANCISCO  
SANTIAGO  
SAO PAULO  
TIJUANA  
TORONTO  
VALENCIA  
WASHINGTON, D.C.

November 13, 2001

**VIA U.S. MAIL & E-MAIL: FR0001@ustr.gov**

Ms. Gloria Blue  
Executive Secretary  
Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

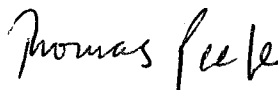
**Re: Potential Action Under Section 203 of the Trade Act  
of 1974 With Regard to Imports of Certain Steel;  
Product Exclusion Request**

Dear Ms. Blue:

On behalf of the Acindar Industria Argentina de Aceros S.A. ("Acindar"), we hereby submit a product exclusion request in response to the Federal Register notice that was issued on October 26, 2001, concerning potential action under Section 203 of the Trade Act of 1974 with regarding to imports of certain steel. Acindar respectfully requests that free-machining carbon steel wire rod (classifiable under HTS 7213.20.00) and free-machining carbon steel bars (classifiable under HTS 7213.20.00 and HTS 7214.30.00) be excluded from any increased duty, tariff-rate quota, or quantitative restriction that the President may impose under Section 203(a) of the Trade Act.

In accordance with the Federal Register notice, we have included twenty (20) copies of our request, which does not contain confidential business information.

Respectfully submitted,



Thomas Peele  
Daniel C. Crosby

Counsel for Acindar Industria  
Argentina de Aceros S.A.

Enclosure

**BEFORE THE  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C.**

---

**In the Matter of:**

**Potential Action Under  
Section 203 Of The Trade  
Act Of 1974 With Regard To  
Imports Of Certain Steel**

---

**REQUEST FOR PRODUCT EXCLUSION FILED ON BEHALF OF  
ACINDAR INDUSTRIA ARGENTINA DE ACEROS S.A.  
(Free-Machining Carbon Steel Wire Rod, HTS 7213.20.00  
& Free-Machining Carbon Steel Bars, HTS 7213.20.00, HTS 7214.30.00)**

Thomas Peele  
Daniel C. Crosby  
BAKER & McKENZIE  
815 Connecticut Avenue, N.W.  
Washington, D.C. 20006  
(202) 452-7000

Counsel for Acindar Industria  
Argentina de Aceros S.A.

November 13, 2001

**REQUEST FOR PRODUCT EXCLUSION FILED ON BEHALF OF  
ACINDAR INDUSTRIA ARGENTINA DE ACEROS S.A.  
(Free-Machining Carbon Steel Wire Rod, HTS 7213.20.00  
& Free-Machining Carbon Steel Bars, HTS 7213.20.00, HTS 7214.30.00)**

**Executive Summary**

Free-machining wire rod should be excluded from any remedies. Wire rod was excluded from this case due to the previous wire rod safeguards case. Free-machining wire rod has been included in carbon steel bar more or less inadvertently. There is no injury finding to support imposition of a remedy on any kind of wire rod, especially free-machining wire rod. Moreover, the U.S. industry's decision not to include free-machining wire rod in the last safeguards as well as in the last two decades of antidumping and countervailing duty cases the industry has filed, is proof that no remedy is necessary or advisable in respect of this product.

Free-machining bars also should be excluded from remedies in this case, due to its unique characteristics and the niche that imports fill in U.S. demand.

## Table of Contents

<b>Introduction .....</b>	<b>1</b>
<b>I. Information and Comments Requested by the TPSC.....</b>	<b>4</b>
<b>II. Comments in Support of the Exclusion of Free-Machining Wire Rod from Any Section 201 Remedy Applied in the Case .....</b>	<b>6</b>
<b>A. Wire Rod Is a Separate Like Product Not Supported by Any Injury Finding .....</b>	<b>6</b>
<b>B. Any Remedy Covering Free-Machining Wire Rod Would Exceed the Amount Necessary to Prevent or Remedy Serious Injury.....</b>	<b>8</b>
<b>III. Conclusion .....</b>	<b>9</b>

## Introduction

In accordance with the Notice of Request for Comments on Potential Action Under Section 203 of the Trade Act of 1974 with Regard to Imports of Certain Steel, published by the Trade Policy Staff Committee (the "TPSC") of the Office of the United States Trade Representative (the "USTR") in the *Federal Register* on October 26, 2001 (66 Fed. Reg. 54,321) (the "Notice"), Acindar Industria Argentina de Aceros S.A. ("Acindar") hereby submits the following comments supporting the exclusion of **free-machining carbon steel wire rod and bars** from any remedy that may be recommended to the President in this case. For the reasons set out below, Acindar respectfully submits that the interagency group should recommend that free-machining carbon steel wire rod, which is classifiable in subheading **7213.20.00**, HTSUS, and also free-machining carbon steel bars classifiable in subheadings HTS **7213.20.00**, and HTS **7214.30.00**, should be **excluded** from any remedy proposed to or implemented by the President.

It appears that free-machining wire **rod** in particular, classifiable in subheading **7213.20.00**, HTSUS, has been included in the current investigation so far purely as a matter of inadvertence. On June 22, 2001, the USTR sent a letter to the Commission requesting the initiation of the instant investigation. Annex II of the USTR's letter indicates that those wire rod products that were excluded from coverage in the recent Section 201 case on wire rod (and which were therefore not subject to safeguards remedies in that case) should also be excluded from the current investigation. These exclusions included products such as such as tire cord quality, valve spring quality and

class III pipe wrap quality wire rod that were excluded from coverage during the course of that earlier investigation. *See Certain Steel Wire Rod*, Invest. No. TA-201-69, USITC Pub. 3207 (July 1999), at II-5 note 14. Free-machining wire rod is another specialized type of wire rod, imports of which were of so little concern to the petitioners in the earlier investigation that it was excluded from the petitioners' proposed scope of investigation in the previous investigation **from the very beginning**. Probably because the exclusion had been in place from the very beginning of the case (rather than in the course of the proceeding), Annex II failed to list free-machining wire rod as an excluded product, but clearly it ought to be recognized as an excluded product and treated on all fours with the other excluded products, *i.e.*, as not being subject to safeguards remedies in this case. There clearly would be no reason to exclude from the current investigation the types of wire rod (such as tire cord quality, valve spring quality and class III pipe wrap quality) that petitioners requested to be excluded from any remedy during the course of the prior investigation, but not to exclude another type of wire rod (free-machining) that the petitioners in that investigation also saw fit to exclude from the scope of investigation from its very inception. If imports of free-machining wire rod could have been a cause of serious injury to the U.S. wire rod industry, the petitioners in that industry certainly would have included them in the prior investigation that they caused to be instituted.

Moreover, over the last twenty years, the domestic industry has repeatedly filed antidumping and countervailing duty cases against wire rod, and has never included free-machining wire rod within the scope of an

investigation.<sup>1</sup> It was only in the early 1980's that the industry evinced any interest in opposing imports of free-machining wire rod, and that was probably accidental, due to the tariff classifications prevailing at the time.

Moreover, even in the most recent antidumping and countervailing duty petitions filed by the U.S. steel wire rod industry – **after** the instant safeguards investigation was instituted – petitioners **specifically excluded** free-machining steel from the proposed scope of the investigation once again.<sup>2</sup> It is clear, therefore, that the U.S. steel industry itself is not interested, and has not been interested for many years, in seeking any remedy with respect to imports of free-machining steel wire rod.

The regular exclusion of free-machining wire rod by a domestic industry in the last safeguards case and decades of unfair trade cases provides direct confirmation that the U.S. industry is not in any need of any remedies respecting this product. To the contrary, imports are filling an important niche in U.S. demand. Consequently, we respectfully submit that the TPSC, recognizing that free-machining wire rod actually should have been excluded from the scope of the current investigation from the very beginning, should recommend that no remedies are required in respect of free-machining wire rod.

---

<sup>1</sup> See Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela, Invs. Nos. 701-TA-368-371 and 731-TA-763-766 (Final), USITC Pubs. 3075 (Nov. 1997) and 3087 (Mar. 1998); Certain Steel Wire Rod from Brazil and Japan, Invs. Nos. 731-TA-646 and 648 (Final), USITC Pub. 2761 (Mar. 1994); Certain Steel Wire Rod from Belgium and Germany, Invs. Nos. 701-TA-359 and 731-TA-686-687 (Preliminary), USITC Pub. 2760 (Mar. 1994); Certain Steel Wire Rod from Brazil, Canada, Japan, and Trinidad and Tobago, Invs. Nos. 731-TA-646-649 (Preliminary), USITC Pub. 2647 (June 1993).

<sup>2</sup> See Antidumping Duty Petition on Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela at 8, (August 31, 2001).

In addition, free-machining steel bars classifiable in subheadings HTS 7213.20.00 and HTS 7214.30.00 are other specialty products for which no remedy is necessary advisable, as explained further below.

**I. Information and Comments Requested by the TPSC**

Acindar submits the following information and comments on the unique physical characteristics and U.S. market position of free-machining wire rod, and free-machining bars, in response to the Notice published by the TPSC.

*(a) The designation of the product under a recognized standard or certification (e.g., ASTM, DIN), or the commercial name for the product and the HTS number under which the product enters the United States;*  
SAE 12L14 / DIN 9SMnPb36 / DIN 9SMnPb28.

Free-machining wire rod (HTS 7213.20.00); and  
Free-machining steel bars (HTS 7214.30.00).

*(b) A description of the product based on physical characteristics (e.g., chemical composition, metallurgical properties, dimensions, surface quality) so as to distinguish the product from products for which exclusion is not sought;*

Free-machining steel is specially tailored to be cold-drawn in drawing benches and then processed by machining operations in lathes and similar equipment. It differs from other steel products mainly due to its content of lead, which acts as an "internal lubricant" to facilitate the machining process. Due to this characteristic, free-machining steel is in demand where high-volume machining operations take place, such as in the automotive and appliance industries.

The typical chemical composition of free-machining [wire rod] of SAE 12L14 in percent weight is as follows:

C	0,06/0,09
P	0,040/0,090
S	0,260/0,350
Mn	0,85/1,15



Si 0,02 max

Pb 0,20/0,35

*(c) The basis for requesting an exclusion;*

Please refer to the introduction above and further discussion in Section II below.

*(d) The names and locations of any producers, in the United States and foreign countries, of the product;*

To the best of Acindar's knowledge, the producers are as follows:

Argentina - Acindar

Brazil - Acos Villares

Canada - Stelco

France - Ispat Unimetal

Germany - Ispat; Saarsthal

Great Britain - Corus

Japan - Kobe

Spain - Aceralia

United States - Inland Steel; RTI (Acindar understands that Inland recently announced, however, that it intends to cease free-machining primary steel production.)

*(e) Total U.S. consumption of the product, if any, by quantity and value for each year from 1996 to 2000, and projected annual consumption for each year from 2001 to 2005, with an explanation of the basis for the projection;*

Estimated U.S. annual consumption of leaded free-machining wire rod and steel bar from 1996-2000 was 600,000 metric tons. Due to the absence of product-specific public information concerning free-machining wire rod, Acindar is unable to provide annual consumption projections for 2001-2005. Argentine exports of leaded free machining steel to the United States market is estimated at 2.5%.

*(f) Total U.S. production of the product for each year from 1996 to 2000, if any; and*

Acindar is not able to provide U.S. production information for free-machining wire rod.

*(g) The identity of any U.S.-produced substitute for the product, total U.S. production of the substitute for each year from 1996 to 2000, and the names of any U.S. producers of the substitute.*

Acindar believes that there is no U.S.-produced substitute for free-machining wire rod.

## **II. Comments in Support of the Exclusion of Free-Machining Wire Rod from Any Section 201 Remedy Applied in the Case**

### **A. Wire Rod Is a Separate Like Product Not Supported by Any Injury Finding**

In determining whether products are “like” for the purposes of safeguards cases, the following factors should be considered: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and (6) price. Based on a consideration of these factors, free-machining wire rod should be excluded from any remedial action taken in this case because rod is clearly a separate like product from bar.

As the TPSC is aware, the coverage of the instant investigation is extremely broad, and the treatment of “like product” issues is likely to present difficulties in defending any U.S. action in dispute settlement proceedings in the World Trade Organization. In the context of the current exclusion request, it must be noted that however broad-gauge the ITC’s approach has been so far, it has at least respected the time-worn distinction between **bar** and **rod** – **except when it comes to free-machining wire rod**. Free-machining wire rod has been lumped in, as an afterthought as it were, with carbon steel bar products. There is no like product analysis that can justify such treatment. In fact, the well-known like product distinction is actually reflected elsewhere in the ITC’s 33-product decision grid. There, under Stainless & Tool Steel Products, is **Bar**/light shapes and, in another product classification, **Rod**. One

would see the same thing in the grid for Carbon & Alloy Long Products, but for the fact that Rod **is supposed not to appear at all** – because it was covered in the previous case on wire rod, filed by the wire rod industry. Yet, at this time, free-machining wire rod remains in this investigation, **as if** it were a kind of **bar** – when it is **not** a kind of bar at all, but a rod, and that brute fact cannot be ignored. There is no injury analysis for rod products in this investigation, and there therefore is no basis whatsoever for recommending, much less imposing, a “remedy” on imports of any kind of wire rod, especially free-machining wire rod, which the U.S. industry has excluded from its petitions for relief over and over again, including in its recent safeguards petition and the antidumping cases filed against multiple countries since this case was initiated.

Finally, with respect to the question of free-machining steel bar – that is, products that really are bars and not rods -- the Commission stated, in a recent sunset review of *Carbon Steel Wire Rod From Argentina*:<sup>3</sup>

Free-machining steels possess a significantly higher level of machinability compared with non-free-machining grades. The effect of certain free-machining additives on steel properties may preclude the use of these steels in certain applications for which optimum strength or toughness is a prime consideration. Free-machining steels are resulfurized (sulfur added), rephosphorized (phosphorus added), and/or have had lead, bismuth, selenium, or tellurium added.

\* \* \*

The addition of sulfur, phosphorus, lead, bismuth, selenium, and/or tellurium embrittles the steel and makes it more prone to cracking than steels of comparable carbon content in the 1000 series. This embrittlement enhances the machinability of the steel, because it makes smaller chips when machined and reduces machine tool wear. Therefore, free-machining carbon steel wire rod is generally sold to cold finishers, who use it to make cold drawn bars. The bars are then used as inputs for the production of machined parts in automatic, high-speed lathes and used mostly by the automotive and appliance industries.<sup>4</sup>

---

<sup>3</sup> Invs. Nos. 701-TA-A and 731-TA-157 (Review), USITC Pub. 3270 (Jan. 2000).

<sup>4</sup> *Id.* at pp. I-14, 7 (footnotes omitted).

The TPSC should, we respectfully submit, take into account the special niche occupied by free-machining bars when considering whether a remedy would be justified at all for such bar products. And, as has already been explained above, the case for no remedy for free-machining wire **rod** is manifestly clear. There in fact never was any consideration of whether such a rod product was injuring the U.S. industry. Thus, there can be no valid basis for a remedy. Moreover, the history of indifference to imports by this industry over two decades confirms that no “remedy” is needed or warranted.

**B. Any Remedy Covering Free-Machining Wire Rod Would Exceed the Amount Necessary to Prevent or Remedy Serious Injury**

The Section 201 relief ultimately recommended to the President must be carefully crafted so that its cumulative impact “does not exceed the amount necessary to prevent or remedy the serious injury.” 19 U.S.C. § 2253(e)(2).<sup>5</sup> In this case, free-machining wire rod is not causing or threatening to cause serious injury. In fact, as already explained below, free-machining wire rod should have been excluded from the scope of this investigation at its outset in light of USTR guidance on the scope of this case, and in consideration of the general lack of interest expressed by the domestic industry in protection with regard to this product in other safeguard and trade remedy actions.

---

<sup>5</sup> U.S. law is basically mirrored by Article 5.1 of the WTO Agreement on Safeguards, which requires that Members of the WTO “shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment.” In the first dispute to be litigated under the WTO Agreement on Safeguards, the WTO Appellate Body stated that this provision “leaves no room for doubt that it imposes an **obligation** on a Member applying a safeguard measure to ensure that the measure applied is commensurate with the goals of preventing or remedying serious injury and of facilitating adjustment.” *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, para. 96 (emphasis in original). In October 2001, a WTO dispute settlement panel affirmed the application of this principle in a case against the United States. See *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe From Korea*, WT/DS202/R, para. 7.79.

There was a low level of competition between imported and domestic free-machining wire rod to begin with. However, the level of free-machining wire rod imports has declined even more recently. Public data demonstrates that free-machining wire rod imports during the first eight months of 2001 have declined considerably when compared with imports during the same period for the last two years. In fact, the value of imports dropped from \$46,319,049 during the first eight months of 2000, to \$25,230,389 during the same period in 2001.<sup>6</sup> That amounts to drop of almost half in imports of free-machining wire rod – and there are of course no safeguard measures in place for that product.

In view of the decline, the first statutory standard for relief under Section 202 of the Tariff Act of 1974 (19 U.S.C. § 2252) – “increased imports”<sup>7</sup> – is clearly not met in the case of free-machining steel wire rod. Free-machining wire rod imports have not increased, but have actually decreased significantly in the past year –even after being excluded from any safeguards protections in the earlier wire rod safeguards case. Certainly, this is entirely inconsistent with any finding that the U.S. steel industry is in need of a remedy with respect to imports of free-machining wire rod.

### **III. Conclusion**

Acindar respectfully submits that, in crafting its recommendation to the President on how to prevent future harm and most effectively facilitate the domestic industry’s adjustment to today’s competitive steel market, the

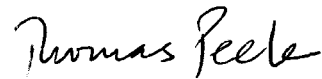
---

<sup>6</sup> Bureau of Census, HTSUS 7213.20.00.

<sup>7</sup> The Commission previously has described “increased imports” as “a statutory requirement.” See Extruded Rubber Thread, Inv. No. TA-201-72, USITC Pub. 3375 (Dec. 2000).

interagency group should specifically exclude free-machining carbon steel wire rod and also free-machining steel bars from any remedial action resulting from this investigation. Such a recommendation would be consistent with the U.S. steel industry's continuing practice of excluding this product from all of the recent trade remedy petitions it has filed – including its recent safeguards petition – against imports of steel wire rod. To do otherwise would be inconsistent with the statutory mandate that any remedy adopted by the President “not exceed the amount necessary to prevent or remedy the serious injury.” 19 U.S.C. § 2253(e)(2). In addition, the inclusion of free-machining wire rod in the remedy of this investigation would impose an unnecessary and unjustified economic cost on U.S. manufacturers and, of course, consumers in highly cost-sensitive industries, such as the automotive and durable appliance goods industries, in which free-machining steel is an important input.

Respectfully submitted,



---

Thomas Peele  
Daniel C. Crosby

Counsel for Acindar Industria  
Argentina de Aceros S.A.

November 13, 2001